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REPORTS

NOTES OF THE WEEK

The Judicial Re-shuffle

Following the appointment of Lord Parker to the office of Lord Chief Justice of England (previously reported on in these columns) in the room of Lord Goddard there have been a considerable number of changes on the bench. In the first place Mr. Justice Willmer goes from the Probate, Divorce and Admiralty Division to the Court of Appeal to fill the vacancy left by Lord Justice Parker. The new Lord Justice who is 59, will substantially reinforce the Admiralty experience of the Court of Appeal. He took silk in 1939 and was appointed to the High Court Bench in 1945. In 1946 he acted as President of the Shipping Claims Tribunal and the following year he was a member of the Supreme Court Committee on Practice and Procedure. Lord Justice Willmer has also been chairman of the Inns of Court Mission (1950). He is an honorary Fellow of Corpus Christi College, Oxford.

His successor in the Probate, Divorce and Admiralty Division is Mr. Joseph Bushby Hewson, Q.C., who is also an experienced Admiralty lawyer. He took silk last April, having been called to the bar by the Inner Temple in 1936. The new Judge practised in the Admiralty Court and the Commercial Court and was junior counsel to the Treasury for Admiralty matters.

Mr. Gerald Alfred Thesiger, Q.C., becomes a Judge of the Queen's Bench Division of the High Court. He is 55 years of age and was educated at Gresham's School, Holt, and at Magdalen College, Oxford, before his call by the Inner Temple in 1926. Mr. Justice Thesiger's speciality is road traffic litigation. From 1953 to 1954 he was Chairman of the Departmental Committee on Licensing of Road Passenger Services. The new Judge took silk in 1948 and became recorder of Hastings the same year. All these appointments add specialized learning to the tribunals concerned and to that will be added the judicial virtues of patience and courtesy in each case.

Lord Goddard, G.C.B.

The nation will be appreciative of the high honour to be bestowed by Her Majesty upon the out-going Lord Chief Justice, whose retirement took effect on September 30. Lord Goddard, who occupied this great office since 1946 will rank with the most illustrious of its holders. He was essentially a judicial "character" and it is not easy to imagine the "Lord Chief's" Court in the Strand without him on the bench.

Lord Goddard's judgments were models of lucidity and common sense. He was a strong but humane disciplinarian in an age which particularly needed such qualities of character. He was witty but did not fall into the judicial trap of being so at the expense of litigants. He pre-eminently symbolized the robust type of wisdom we like to think that our common law heritage bestows.

We wish him a long and happy retirement in the ancient distinction which the Queen will confer upon him.

Not Guilty, but pleaded Guilty

How a man who had pleaded guilty and had been convicted as an incorrigible rogue and sent to quarter sessions for sentence was in the end found not guilty and discharged is told in *The Yorkshire Post*.

A police officer told the court at the outset that he was satisfied that the man was not guilty of loitering with intent to commit felony, either on the occasion now in question or on previous occasions when he had pleaded guilty, but was anxious to get back to prison because he had neither friends, home, nor work. He had in fact spent the last 18 months, except for a few days, in prison. On the last occasion when he was arrested in a shop doorway he had no housebreaking tools on him and no attempt had been made to break in.

The court thereupon granted the man leave to appeal against conviction, he being no doubt out of time, and the court evidently being of opinion that his plea of guilty was not a genuine plea which should be acted upon. There was no criticism of the magistrates' court, which had acted without such information as was now before quarter sessions.

Having assigned legal assistance to the man and given leave to appeal, the

court proceeded to a formal hearing, and prosecuting counsel offered no evidence. The appeal was allowed, the recorder expressing his appreciation of the action of the police.

That was not all. If it had been, the new freedom granted him would have been of little use to a man who saw no desirable alternative to prison. He was put in touch with a probation officer, who will by now, in all probability, have found him work and lodgings.

The story is a strange one, made all the stranger because the man was only 28 years of age. The down-and-out who wants to go to prison is generally much older than that.

Evicted Families

The problem of dealing with children whose parents have been evicted from their homes, which has become acute in Oxfordshire, no doubt exists fairly widely. The Oxfordshire county council is discussing it with various organizations. The council, like other landlords, has felt bound to eject, after due warning, a number of families, on account of arrears of rent, and the result has been that children have had to be received into care. It has been stated that about one-third of the cases involved council properties.

As has been said by the children's officer, receiving the children into care is not only costly, it is also likely to lead, in a number of cases, to the break-up of families. Since the policy of all local authorities is to keep families from break-up and to restore children in care to their parents as soon as possible, emphasis is laid on improving homes rather than disbanding them. This is indeed a perplexing problem. It might be suggested that it would be far cheaper to let such people live rent free than to keep the children in care at great expense to the public, but that is very much too superficial a remedy. What would be the attitude of tenants who pay their rent regularly, and of other people on the waiting list for a council house, if they learned that some tenants were allowed to occupy council houses although they did not pay rent ?

It will prove difficult for these evicted tenants to obtain other accommodation elsewhere, as prospective landlords are not likely to accept them once they know why they are in search of accommodation. The whole question is full of complications, and it is not one to be dealt with as anything but a serious state of affairs, involving as it does the welfare of children, the duties of parents, and the burdens of the ratepayers.

On the general problem of the evicted, *see* an article at p. 483, *ante*.

Probation Failures

The Surrey Comet of September 17 refers to some figures relating to cases on probation which, on the face of them, are disquieting. During the first half of this year, it is stated, the behaviour of 15 out of 32 men put on probation at Surrey sessions proved unsatisfactory, and 14 of the men were subsequently sentenced. A report from the treatment of offenders committee suggested that if the present crime wave continues it may become necessary to use probation more sparingly. The committee recognized that quarter sessions which has strong powers of dealing with probationers who will not co-operate, has always been ready to take chances if there appears to be a reasonable prospect of success, but it was disappointing to find how frequently such chances are interpreted as weakness. Brigadier A. C. C. Willway, chairman of quarter sessions reminded a meeting of magistrates' that at the previous sessions attention had been drawn to the depressing figures for borstal successes. Whereas a few years ago they were slightly more than 60 *per cent.* now they were a little less than 50. Brigadier Willway said that the proportion of failures of probationers was the worst that he could remember in nearly 30 years' work in that court.

If the same trend is found to exist generally throughout the country, magistrates will no doubt consider carefully whether they should take fewer risks in putting offenders on probation. We are sure that there is no falling off in the standard of the work of probation officers; the trouble here, as in borstal institutions, is that the material becomes more and more difficult, and this applies most of all to teenagers.

More Detention Centres Needed

The same issue of the *Surrey Comet* reports a decision of the Surrey magistrates to ask the Home Secretary to receive a deputation about the provision of additional detention centres. The court of quarter sessions uses the existing centres considerably with encouraging results, but there has evidently been difficulty in securing vacancies because the centres are so often full.

During the discussion Brigadier Willway, chairman of quarter sessions, pointed out that there was a school of thought which disapproved of the centres on the grounds that they did not provide constructive training, but in the view of most magistrates who made use of the centres, that was the wrong approach.

Some of the magistrates expressed dissatisfaction at the long period of waiting for vacancies as well as the lack of after-care. We entirely agree that if a boy is to be punished by being sent to a detention centre it is most undesirable that there should be a substantial interval, even if he is released on bail, before he can be received at the centre. We think also that there is a case for compulsory after-care. These considerations are apart from the question whether detention centres are administered on the right lines, a matter upon which we do not venture an opinion. They are a part of our present penal system, and therefore should be available to the court.

Doctors and the Juvenile Courts

In *The Executive Council*, which is the official journal of the Society of Clerks of Executive Councils (National Health Service) for September, mention is made of a special conference on mental health held at East Ham to which representatives of the church, education, medicine, justices and probation officers were invited. At this conference an address was given by Dr. J. C. Sawle Thomas, regional psychiatrist to the North East Metropolitan Regional Hospital Board who spoke on the " Structure of Modern Society from the Psychiatric Viewpoint."

The conference was also addressed by Dr. J. Stanley Thomas, J.P., the chairman of the council, and by the chairman of the East Ham magistrates and juvenile court.

Dr. Thomas spoke of maladjusted children who find their way into the courts and he suggested that the knowledge of the family doctor and the health visitor could be of great help to the magistrates and the probation officer in such cases. The chairman of the bench invited local practitioners to visit the juvenile court and since the conference many doctors have availed themselves of the invitation.

Safe Cycling for Children

All those who work so hard to reduce the number of road accidents will agree that the training of children in good

habits is a vital part of that work. The importance of the training and testing of child cyclists was stressed in a recent report by a Ministry of Transport working party. *Road Safety Notes*, August, 1958, issued by the West Riding constabulary, record that during each of the past three years over 3,000 children in the West Riding police district have taken the cycling proficiency test through the sustained efforts of the members of the local Road Safety Committee and others who have made themselves responsible for training and testing the children.

Tribute is paid to the wholehearted help and co-operation of the teaching staffs of the schools and to the generosity of a local firm which loaned its spacious factory area for the carrying out of some recent tests. The roadways between the various workshops provided examples of all types of junctions and hazards required for the test. On this particular occasion 78 children attended and 64 of them gained the proficiency award. Two boys each secured a mark of 97 *per cent.*, and the leading girl had 96 *per cent.*

In the same *Notes* are given figures for the road accidents in the West Riding police area for the first half of 1958. The total casualties were 95 killed and 3,795 injured. These included five pedal cyclists under 15 killed and 154 injured and seven pedal cyclists over 15 killed and 351 injured. No one would suggest that it is always the cyclist's fault, but obviously these figures suggest that the more the cyclist can do to save himself the better.

"Where my Caravan Has Rested"

Not "flowers I leave you on the grass" in accord with a pleasant gipsy tradition, but between three and four hundredweight of litter, was what a police officer described to Towcester magistrates' court when a young man, described as a wandering caravan dweller, was prosecuted for depositing litter and camping on the highway.

The report in the *Northampton Mercury and Herald* states that the defendant, who denied the charge of depositing litter, said that when he was on his own he always left things tidy, and this litter was left by others, so he did not want to clear it up. It appeared that he and a party had camped on the highway and had left the litter behind on the grass verge. He was fined £3 in all.

Today there are two kinds of caravan dwellers. The new caravan dwellers are mostly those who are unable to find housing accommodation, and who take to caravan life, generally on a recognized site where some amenities are provided. They are, according to all accounts, mostly tidy and orderly, so that nearby householders have no complaints, and there is little litter. The old wandering type, going from place to place and camping wherever they can are less desirable visitors, for they are too inclined to leave behind them all sorts of unwanted articles. Perhaps a few prosecutions will have a salutary effect.

That was a case of mass litter, but it is well that the new Act is also being enforced against the droppers of unconsidered trifles. From various newspapers we note that at Thirsk defendants were fined £1 each for leaving orange peel and banana skins, at West Hartlepool a fine of 10*s.* was imposed for throwing down fish and chips paper close to a litter bin and at Stoke-on-Trent a fine of £1 for throwing away two bits of paper on the highway.

After October 6 Under the Rent Acts

After October 6 the situation under the new Rent Act and the Landlord and Tenant (Temporary Provisions) Act, 1958, will crystallize. It does not appear in the least likely that those who predicted "wholesale evictions" will prove correct in their assertions. In a number of large cities the position is said to be "obscure" but in many (*e.g.*, Manchester where the tiny number of 30 tenants have made application to the city authorities and Sheffield) the atmosphere is one of optimism and the main areas of difficulty outside London would appear to be Glasgow and Birmingham and perhaps Portsmouth as well. *The Times* have published a list including the main cities and the approximate number who have applied to their local authority for a house:

	Population in '000s	*Approximate number who have applied for a house*
Birmingham	1,110	641
Glasgow	1,081	1,000
Liverpool	774	No data but "no rush"
Manchester	686	30
Leeds	508	60
Edinburgh	467	100
Sheffield	499	NIL
Bristol	440	200
Newcastle	277	71
Portsmouth	231	600
Plymouth	216	200
Cardiff	250	No data

A useful little booklet has been published by the Ministry of Housing in conjunction with the Central Office of Information about the new Landlord and Tenant Act. This lucidly sets out the main effects of this amending legislation. The Act applies only to the tenants of decontrolled houses and flats who have received notice to quit under the 1957 Rent Act but who have remained in occupation after their notice has expired. The three main effects of the Act are: (i) That the owner must go to the county court for possession, (ii) That the tenants position is regularized if he remains on after the expiry of the notice, and (iii) That the tenant must satisfy the court on four points. If he succeeds in doing this the Judge suspends the order for possession for a period of three–nine months. The tenants "four points" are: (*a*) that he must *not* have unreasonably refused any proposal for a new tenancy of three years or more (*b*) that he has failed to get alternative accomodation after reasonable effort (*c*) that he has paid his rent up to date and (*d*) that greater hardship would be caused by making an order for immediate possession than by suspending it for three–nine months. In connexion with (*a*) and (*b*), *supra*, the court will take into account the means of the occupier (and family contributions) his age, and any disability he may have the misfortune to undergo. So far as rent is concerned from the date of the expiry of the notice to quit to the court hearing it will be twice the gross rateable value plus rates and a reasonable charge for any services. After the court hearing the rent will be that specified in the court order and this means the rent asked by the owner unless the court is satisfied that it is beyond his means. The Act provides for *ad hoc* revision at any time owing to change in circumstances.

Provision is made in the Act for extensions and the tenant seeking extra time must (in the absence of special leave) put in his application not later than 28 days before the suspension period expires. He must then establish his "Four Points" to the satisfaction of the court which within its discretion can allow a further suspension for up to six months. It should be remarked that the Act is a "Temporary Provisions" Act which comes to an end (unless renewed) by July 31, 1961.

As many people of comparatively limited means may be involved it is important to note that in the absence of special reasons there will be no order by the court as to costs. It follows, therefore, that each party will bear his own costs and if the litigant appears in person these will be very limited.

ONE FINAL CHANCE

By JOHN HALES-TOOKE

The majority of defending solicitors find themselves, sooner or later, pleading with magistrates to show leniency to a defendant whose crime sheet shows a long history of delinquency. Even though the defendant's attitude indicates little promise of amendment, magistrates are often willing to give a last chance. In many cases this charity is justified, even at the eleventh hour. In many more the solicitor endures the disheartening experience of seeing the same defendant appear at the next quarter sessions for breach of a probation order.

Annual statistics indicate that crime is increasing. Crowded prisons and undermanned police establishments do little to discourage the spread of criminal tendencies among the younger generation.

It may well be that the time has come to reassess the function of law, and the purpose that underlies all preventive measures.

At one time the rigidity of legal process was its main reproach. Coupled with this was the maxim that punishment was designed to deter rather than to reform and rehabilitate.

Flogging, hanging for comparatively trivial offences, and transportation were the standard punishments of that time. Succeeding generations watched the introduction and progress of a probation system which is now second to none. It has to be admitted that for all the flexibility and humanity that now motivates our legal system, there are many criminals who will not respond to the opportunities that are afforded.

The abolition of flogging and capital punishment remain controversial issues. This suggests that legislation has to some extent failed in its purpose. Largely, one supposes, for want of discrimination.

It has been said that the punishments meted out under the old deterrent system depended for their effect on depriving the prisoner of his basic dignity as a human being. Much has also been written on the point. One cannot deter without instilling fear.

Fear debases human nature. So ran the argument. But is this true? Such a question cannot be answered without constant attendance at court. Criminal behaviour tends to follow patterns; so does the evidence that probation officers give at Assize and quarter sessional courts throughout the country.

The probation officer is in the best position to know whether an individual will respond to inducements other than threats. He would also know what threat can be made in any particular case without invoking cruelty or degradation.

Criminals often fall into petty larceny in their youth. A milk bottle here or a bicycle there set the pattern. Robbery with violence and housebreaking are soon added to the agenda. Finally the defendant appears in a dock and listens while the probation officer reads out his case history to an Assize Judge. Not infrequently the court hears that the defendant failed to co-operate, or that his attendances were erratic. Not a few defendants showed an utter disregard for the probation officer. They were determined to go their own way.

When matters go this far, one wonders whether rehabilitation can be achieved unless a wholesome element of discipline is introduced. What else can supplement the advice that an overworked probation service is called upon to give?

The answer may well lie in other questions. Can a man be made to endure ridicule without suffering a debasement of his essential humanity? Can a man's vanity be deflated without stripping him of his natural dignity as a human being?

Once again the clue seems to lie in the evidence of probation officers. It would need a psychiatrist rather than a lawyer to explain the fundamental weaknesses that cause an individual to shirk responsibilities that are accepted by the mature citizen. Why healthy youths prefer robbing a cripple to honest work may be a medical rather than a legal problem. There is much that a lawyer can do once legislation accepts the fact that many men willingly prefer such degradation to honest work.

Remedy is conceived in experiment. Our fathers believed that man's fallen nature could be controlled so long as he had a healthy fear of the consequences of his acts.

Society demands responsibilities of us all. A criminal's determination to be lawless reflects his determination to shirk those responsibilities.

Sending a man to prison is all too often encouraging him to evade his obligations. A means must be found of making the shirker accept his responsibilities.

As matters stand at present, there appears to be little between probation and various forms of confinement. Cannot the legislature devise some new corrective remedy to act as an intermediate stage between the two alternatives now open to Judges?

On the one hand there is the open prison. On the other, one finds probation with conditions of residence attached. Why not effect a compromise between the two?

The overworked prison officer in a crowded jail has little time for encouraging the individual prisoner. Although statistics show that many first offenders have a healthy disinclination to return for another dose, this largely applies to prisoners who will respond to treatment sooner or later. Had they responded sooner, the probation officer could have claimed another triumph.

To the feckless and irresponsible, prison can lose all terror once they see how comparatively comfortable jail can be. It is the last category of criminal that needs such hearty encouragement to return outside the prison door.

Prisons without bars commit their inmates to healthy outdoor work. Many prisoners from such establishments work on nearby farms. This feature of their activities is excellent. Prisons without bars are prisons nonetheless and can only be reached after graduating through conventional prison routine.

Compulsory work subject to vigilant inspection points towards an answer. If such a system was combined with an obligation to reside in approved hostels an element of detention would be present without the stigma of prison.

The court would specify the term to be endured by any particular offender. Qualified masculine social workers, preferably with some experience of teaching in borstals, could be recruited to serve the hostels in a disciplinary and administrative rôle.

There are many manual jobs which could be performed by such workers. In town and country alike there is work which fails to attract recruits. Before this final chance of proba-

tion was offered to any offender the alternative should be clearly explained. Refusal to co-operate would result in a stiff term of imprisonment. Breach of the conditions on which it was offered and subsequent offences would have the same result.

At the moment there is a tendency to give a first offender as light a sentence as possible solely because he is a first offender. Under such circumstances prison is not always the deterrent that it should be.

Compulsory labour backed by the threat of worse to befall might well compel a man to reform before it was too late. Eligibility for this "better-than-jail" alternative could well be made subject to compulsory deductions from his pay packet to refund the victims of his crimes.

MAN'S PREROGATIVE *

At 121 J.P.N. 243 we discussed the version then current of the Obscene Publications Bill. It is now certain that no such Bill can proceed before 1959, and in the present article we shall accordingly refer to the lapsed Bill only in so far as its clauses formed the basis of the Report of the Select Committee of the House of Commons, which was appointed in the session of 1956–7 and again in 1957–8, and took evidence from May to July in 1957. This evidence was ordered to be printed in March, 1958, on the same day as the report of the Committee, but it did not become available through H.M. Stationery Office (H.C. 122) for another two months, and further evidence given later in 1957 and in January, 1958, was not available until June, 1958 (H.C. 123–I). The Select Committee's report is also available without the evidence, as H.C. 123 of 1958. While much of the evidence came inevitably from official sources, the Select Committee also heard witnesses in 1957 from the Society of Authors and the Publishers' Association, both of whom put in memoranda, from the Public Morality Council, and the Federation of Master Printers. In 1958 it heard Mr. T. S. Eliot and Mr. E. M. Forster, who appeared independently of the Society of Authors.

It is now possible, in the light of the Report and of the official evidence, to form a better opinion about certain matters of which we spoke in our series of long articles in 1954. It may, for example, be remembered that we mentioned complaints which to our knowledge had been made not infrequently by counsel, that police action had resulted from the circulation to police authorities of a list of publications drawn up in the Home Office. The stock complaint was that the magistrates might be influenced in favour of conviction, or at any rate of destruction when the proceedings were under the Obscene Publications Act, 1857, by the fact that the Home Secretary had put a publication on the list. A former police officer wrote to us to say that during his period of service he had never come across a list circulated from the Home Office such as was described. We had no means of verifying precisely what took place, but it now appears that at one time such lists were issued to police authorities, and that the practice has now ceased. This was specifically stated in Sir Frank Newsom's evidence on May 20, 1957, in answer to questions 75–76, though he does not appear to indicate just when the change of practice took place. Another change of practice of which he spoke on the same day, in reply to question 10 and following questions, relates to the Home Secretary's moving the Director of Public Prosecutions to institute a prosecution. A change of practice here arose partly from new instructions to the Director given by the Attorney-General, with the consent of the Lord Chancellor and the Home Secretary, and partly from its being considered by the Home Secretary in 1946 that there was something incompatible in his setting the criminal law in motion through the Director of Public Prosecutions, when he must afterwards advise the Sovereign in relation to the prerogative of mercy. This consideration is not limited to the present subject; it applies to all criminal proceedings, but the change is particularly interesting here, as also is the change of practice in relation to the Act of 1857, because of the general impression in the literary and also in the legal world, that proceedings for destruction of *The Well of Loneliness* had originated in a personal decision of Sir William Joynson-Hicks, when he was Home Secretary. We have not been able to lay our hands upon direct authority for his having taken this decision, but we notice that in a leading article in *The Times* this year it was stated as a fact. Be this as it may, Sir William Joynson-Hicks himself, answering questions in the House of Commons, stated that he did set police authorities or the Director of Public Prosecutions in motion in regard to obscene publications, and said, in terms, that in doing so he paid no regard to the literary merit of a publication. We shall have more to say later about the question of literary or artistic merit.

A third point which we are glad to see cleared up in the same evidence related to a statement made in the *Manchester Guardian* in May, 1957. Briefly this was that when the French Government used its powers last year to secure the withdrawal from the market of copies in English of a novel called *Lolita,* written by a Russian who is a professor of literature at Cornell University, it had done so at the request of the British Government—and, more particularly, of the Home Office. In the Home Office evidence it was specifically denied that the Home Office had named this novel in any communication to the French Government. Moreover, it was stated that in such communications, made in virtue of an international convention, the Home Office would not name any work unless it had already been held to be obscene in the English courts. Although the statement in the *Manchester Guardian* was given with great particularity, under the signature of a correspondent who seemed sure of his facts, it is thus shown to be mistaken and it is (we think) important that it should be known that the Home Office (or by inference any department of the British Government) does not communicate to other governments the views of British Ministers or officials about literary or artistic works, with a view to action by those other governments. Upon the statement that the British Government only makes known the decisions of the courts there is, however, one apparent gloss. Where the Customs prevent the importation of a book, and the importer has not taken the steps open to him to challenge the action of the Customs, this fact also would be communicated, or might be communicated, to foreign governments by the Home Office—not by the Customs, according to their evidence. In later evidence it appeared that the list of books excluded from this country by the Customs is longer than the list of books held to be obscene by English courts. This being

* Books are a part of man's prerogative;
In formal ink they thoughts and voices hold.
Overberry.

so, it is idle to deny that an official censorship is exercised, by one branch of the British Government, and we shall have more to say about this also, indicating the amendments of the law and practice which we consider essential in this field.

All the witnesses, including those who desired alterations in the present law, agreed with the view stated at the outset of the Home Office evidence, that it was the duty of governments to prevent distribution of pornographic works. In our articles of 1954 we mentioned that serious doubt had been expressed by responsible people, on the question whether books or pictures could in truth deprave or corrupt those who read or saw them, but before the Select Committee this fundamental proposition was not contested. (Strange to say, the witness who seemed nearest to scepticism was not one of the literary men, but a provincial chief constable.) It would, indeed, be hopeless to contest the proposition in England, in face of public acceptance of the censorship of plays and the more recent extension of censorship to films, and of the known existence of a mass of what can be called wholly pornographic books and pictures—including some of the post cards which from time to time come to public notice. The Metropolitan Police gave detailed evidence about this trade, and similar evidence was given by the Customs. The police witnesses considered that the bulk of material with which they had to deal presented no difficulty of classification; nobody had a good word for it, or queried the desirability of efforts to suppress it. The police would like some alterations of the law, strengthening their hands in dealing with this material, and declared that the border-line works about which discussion rages were few, in comparison with those which had no possible merit. This can be accepted, but mere numerical comparison is not conclusive—it could equally be said that only an infinitesimal fraction of all novels published every year (which are not obscene) had any merit. Moreover, there occurs in this part of the written evidence another reference to *Lolita*, the book mentioned above as being written by a professor of literature at Cornell University. This book was listed with about a score of others said by the Commissioner of Police to be "usually quite disgusting." As against this, the literary commentator in the *Manchester Guardian*, who had perused the book, declared that it contained nothing objectionable, although the subject, the sexual feeling of a man for his young step-daughter, was distasteful to him. This distaste is not surprising, but it would be interesting to know whether the objection taken to the book was upon the ground of its subject or of the treatment of the subject. If the latter, there is a difference of opinion between the *Manchester Guardian's* critic and the magistrates, who were said to have twice convicted sellers of the book, or ordered its destruction. If the former, the prosecution looks like a repetition of the case of *The Well of Loneliness*, which nobody ever pretended was objectionable in detail, though it was considered obscene to write a novel about female homosexuality: the police evidence left it a little uncertain what was the ground of action against Lolita, and can be construed to mean that the proceedings started for no better reason than that the publishing firm were known to have specialized in obscene or dubious works.

There arises in connexion with all evidence of this sort the question "what is pornographic," and then the question "Can the publication of a pornographic work be for the public good, either because it contains information which ought to be available, or because of high literary or artistic merit, which in the public interest ought to be displayed, even though the subject matter might be objectionable if treated otherwise?"

(To be continued)

COMMON LAW ASPECTS OF THE COMMON SEAL

By EDWARD S. WALKER, D.P.A.

Readers will be aware that the Lord Chancellor has invited his Law Reform Committee to consider whether, having regard in particular to the decision in *A. R. Wright & Son, Ltd.*, v. *Romford Borough Council* (1957) 121 J.P. 44; [1956] 3 All E.R. 785, alterations are desirable in the law as to the formalities required in the case of contracts made by, or notices or other documents required to be given or executed by, bodies corporate, not being companies within the meaning of the Companies Act, 1948. In the *Romford* case it was held that the Local Government Act, 1933, s. 266 (2), did not affect the common law rule that a contract not under seal was not enforceable against a corporation; even if a corporation complied with their standing orders, the signature of their agent would not validate an agreement which was not under seal and did not fall within any of the recognized exceptions to the rule; and therefore, the contract in question not being under the seal of the corporation, it was not enforceable against the corporation.

As a consequence of the foregoing, it will be of interest to recollect some of the common law aspects of the common seal of a corporation. In Coke's report (10 Co. Rep. 1a) of *Sutton's Hospital Case* (1612) 77 E.R. 937, it is stated that a "corporation is sufficient without words to implead and to be impleaded, etc., and therefore divers subsequent in the charter are not necessary but only declaratory, and might well have been left out, as to have a seal."

The Local Government Act, 1933, also prescribes that urban district councils, rural district councils and county councils (ss. 31 (2), 32 (2) and 2 (3) respectively) are corporations and shall have a common seal.

It is also accepted that the non-existence of a seal is evidence (although not conclusive) against incorporation of a corporation: *R.* v. *Dacres* (*Lord*) (1553) 1 Dyer, 81a; 73 E.R. 175; *sub. nom. Anon.*, Jenk. 81a; *sub. nom. Greystoke College Case* cited 4 Co. Rep. 107; and *Bailiffs of Ipswich* v. *Johnston*, 2 Barnard, 191.

Strictly, at common law, all the acts of corporations must be attested by the fixing of their seal. The corporation being invisible and, as Coke adds (10 Rep. 32), "without a soul" cannot manifest their intention by any personal act or oral discourse. The corporators therefore act and speak only by the common seal. For though the particular members may express their private consent to any act by words or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which unites the several assents of the individual corporators who compose the community, and makes one joint assent of the whole. As expressed by Rolfe, B., in *Ludlow Corporation* v. *Charlton* (1840) 10 L.J. Ex. 75; 6 M. & W. 815; "The seal is required as authenticating the concurrence of the whole body corporate. If the legislature in creating a body corporate

invest any member of it either expressly or impliedly with authority to bind the whole body by his mere signature, then undoubtedly the adding of a seal would be a matter purely of form, and not of substance. Everyone becoming a member of such a corporation knows that he is liable to be bound in his corporate character by such an act, and persons dealing with the corporation know that by such an act the body will be bound. But in other cases the seal is the only authentic evidence of what the corporation has done or agreed to do. The resolution of a meeting, however numerously attended, is after all not the act of the whole body. Every member knows he is bound by what is done under the corporate seal, and by nothing else. It is a great mistake, therefore, to speak of the necessity of a seal as a relic of ignorant times. It is no such thing; either a seal or some substitute for a seal which by law shall be taken as conclusively evidencing the sense of the whole body corporate, is a necessity inherent to the very nature of a corporation."

The form of the common seal is largely immaterial; it may be by simple embossment, wafer, or an ink print. Nor need it be inscribed with any special design or notation, or even show that it is the corporate seal, since any seal, even some other person's, will suffice as the corporate seal if it is affixed as the corporate seal: *Yarmouth Corporation and Cowper's Case* (1630) Godb. 439; 78 E.R. 258.

The only qualification to the foregoing is that if the corporate seal shows a coat of arms, those arms must be in the form prescribed by, and by leave of, the College of Arms: *Manchester Corporation* v. *Manchester Palace of Varieties* (1955) 119 J.P. 191; [1955] 1 All E.R. 387.

It sometimes happens that a corporation changes its seal, and it has been said that a corporation may, by consent of the corporators, change its seal at any time, and consequently, as has been said, may validly affix to an instrument any seal whatever provided it purport to be the corporation's common seal (Sheppard's Touchstone of Common Assurances, 57). But, considering the embarrassment and doubts that would arise from the constant change in the corporate seal, and also the fact that the legislature by statute expressly authorizes limited liability corporations to alter from time to time their common seals (Companies Act, 1948); and that for some corporations their charters contain a similar power, it may be fairly questioned whether such a power exists at common law for a corporation.

HEARINGS OR LETTERS

A correspondent to whom we have been indebted for information about procedure at ministerial inquiries calls our attention to a difference between the procedure under the Town and Country Planning (Advertisement) Regulations, 1948, S.I. 1948, No. 1613, and that under the provision in statutes, to which the Franks Committee referred, which gives the deciding Minister the option of ordering a public local inquiry or giving objecting parties an opportunity to be heard, but obliges him to do one or the other, if objection is made and maintained to a proposal upon which he has to adjudicate. The pedigree of this option can be traced to s. 231 (2) of the Local Government Act, 1933, read with s. 290 of that Act; indeed, it goes back further. The Franks Committee were especially concerned with this provision in para. 4 (2) of sch. 1 to the Acquisition of Land (Authorization Procedure) Act, 1945, and they recommend that the option under that Act should be taken away from the deciding Minister and a public inquiry should be ordered in all cases, with the corollary that the rules which the Committee recommended for the giving in public of departmental evidence would become applicable. We have mentioned, already, that the Government have not so far given up the option of ordering a hearing instead of an inquiry under the Act of 1945; we have also said that in our experience the option makes little or no difference, as these sections are worked. The technical differences seem to be that the person appointed to conduct a hearing has not the power of a person conducting an inquiry to take evidence on oath and issue a subpoena (neither of which is ordinarily done at a public inquiry), and that the Minister has no power to recover the cost of a hearing, *eo nomine*, from the persons heard. A hearing as distinct from an inquiry may thus be advantageous to those persons where, as often happens, they are persons of small means. Our decided impression is that the amount of information given by the promoters of a project being examined (ministerial or other) is the same, and that hearings, no less than inquiries, have normally been treated as open to the public and the press.

Under the Town and Country Planning (Control of Advertisements) Regulations, however, the Minister of Housing and Local Government is not obliged to order either an inquiry or a hearing. Our correspondent has been good enough to send us copies of letters which have passed between him and the Ministry from which it seems that, where a planning authority, or a local authority exercising delegated planning powers, wishes to take action against existing advertisements and the advertiser appeals to the Minister, the Minister often decides the issue arising upon written information, supplemented by a visit paid by one of his officers without representatives of either side, when the officer forms his own opinion of the advertisements in question and reports it to the Minister. This procedure springs from reg. 20 (3), which provides that the Minister may call for written statements from each side, and decide the issue on those statements if satisfied that he has enough information to do so. If he is not so satisfied he must grant a hearing if either party so desires.

Decision by a Minister upon written representations from both sides of a dispute is a familiar process—historically it goes back at least to 1851, in the days of the Poor Law Board. Our present correspondent seems slightly perturbed, lest it should give an opportunity for one side or the other to put in representations to the Minister which are not seen by the other side, but we see no reason to fear that this will happen any more now that for a century past, or any more easily than where there is a public inquiry or oral hearing. It is physically possible for one side or the other, after an inquiry has finished, to send further information or representations to the deciding Minister, in the hope that he will take notice of them without giving an opportunity to reply; indeed, we have ourselves referred to the conduct of members of Parliament, in making themselves the channel for such representations, which a strong and conscientious Minister will decline to receive but a weak or stupid Minister has been known to entertain even to the length of receiving a

deputation from one side in the absence of the other. This is inherent in ministerial jurisdiction. The extent to which the evil will prevail, or can be prevented, depends upon the understanding by Ministers of the essentially judicial nature of the functions involved, and upon the strength of character of their advisers, who may have the duty of pointing out to them that representations reaching them through political sources are improper.

We can see no reason to suppose that these improper advances, either through members of Parliament or directly by the parties concerned, are more likely to be made when the deciding Minister is acting only upon documents, with the report of an unaccompanied visit by one of his own officers, than where a public inquiry or oral hearing has taken place. It is conceivable that the danger may be less; persons desirous of influencing the mind of a Minister have been known to write (directly or through a member of the House of Commons) saying that for personal reasons they do not wish to appear in public, but would like what they say to be taken into account at the same time as the evidence heard by the Minister's inspector.

For the particular purpose of the Town and Country Planning (Advertisement) Regulations we see no harm in reg. 20 (3) above cited. The issue for decision is one of taste and artistic appreciation, which is not particularly suitable for the forensic process of oral evidence and cross-examination.

PROBLEM OF DEEPENING APATHY AT THE ELECTIONS

By FRANK L. DE BAUGHN

What is the reason for the continued apathy in local affairs? That is not, of course, an original question. It has been raised at about the time of the district council elections, the county council elections, the elections in the boroughs over the last quarter of a century or more.

And I think we can now submit that the question is not only not original—it is also out-dated. The most important question, in these days, and one that raises all sorts of perturbing conjectures is—what is the reason for this deepening apathy in local affairs?

Why is it, for instance, that despite all the exhortations of the leaders of the political parties, of the newspapers of all types and shades of opinion (yes—even the lighter papers urge their readers to do their duty and vote at election time), of the B.B.C. and the magazines—why is it, despite all this mass appeal, that fewer and fewer people seem to be taking an interest in the very important matters of how their own county, borough or district council is being governed?

For, make no mistake about it, apathy is deepening. And apathy is not confined to the electorate, the people who simply refuse to exercise their right to vote. More and more in these days it is becoming difficult to recruit candidates to present themselves for election. More—both the major political parties have had very discouraging indications in these last five or six years that it is becoming steadily more difficult even to get a candidate to stand in a "safe" seat, a candidate who might almost be promised an unopposed return.

Now, what is the reason for all this? People with longer memories seem to be in no doubt at all—it is the fact that party political warfare has been transferred from the House of Commons (or rather, has been extended from the House of Commons) into the county halls and the town halls up and down the country.

Apathy, deepening apathy reflecting in steadily falling polls, reflected in the disinclination of people to stand for election, reflected in the complete refusal of all but the enthusiastic minority to take part in any canvassing activities—all this, I am told, is due to the extension of political warfare from Parliament into the realm of local government.

How far is it true, I wonder? To test the theory in some detail I have made inquiries among experienced campaigners in local elections in the West Riding of Yorkshire, and one or two other areas and have studied newspaper files which give election returns over the last 100 years or so, that is since before party politics appeared in the council chambers.

Let us, to start, take a look at the trend in polling. How many people vote today in the local elections? How many voted in these same districts say three years ago? The county council elections, triennial affairs, can give us a good "line" here.

In the Sowerby Bridge Division, in 1952, there was a 35 *per cent.* poll in the triennial election for the West Riding county council.

In 1955, the percentage was down to 24·6 *per cent.*

In this year's election the polling percentage remained static at 25.

Looking at Sowerby Bridge Division and seven neighbouring divisions, all west of the county boroughs of Leeds and Bradford and the borough of Halifax, I find that the highest percentage poll in 1955 was 49·5, in Brighouse North. The lowest was 22·65 at Ripponden.

This year, in these same divisions, the percentage poll in Brighouse North rose slightly to 54·2, this division again winning the distinction of securing the highest percentage poll of any of the eight divisions in the Pennines section of the West Riding county area.

Ripponden Division's percentage, this year, rose to 23·45 but the Todmorden Division, adjacent to Ripponden, had a percentage poll of only 20·06 *per cent.*, one of the lowest in all England.

And all these elections, in all the divisions, in 1952, 1955 and again this year were fought on party political levels. So I can, at least, maintain that the translation of party politics into local affairs, on the basis of eight representative divisions in the West Riding, certainly does not seem to tend towards improving the percentage polls. On the contrary, taking the eight divisions as a whole, the average percentage poll has tended to fall over the years.

But what of the position before party politics appeared in the town halls?

For this comparison let us move the scene of the inquiry into the nearest big town, to Halifax, an independent borough where, unfortunately, percentage polls of under 50 have been all too common in many of the municipal election contests these last few years.

Dipping into the records for the municipal election of 1910 I find that in Halifax's four wards at that time there were percentage polls as follows: 61·13 (Skircoat); 74·00 (East); 61·59 (West); 79·91 (Copley).

No political arguments in this election? On the contrary, there were. The rival candidates in each ward were Liberal or Conservative and so proudly proclaimed themselves on their election literature and in their speeches reported (at length) in the local newspapers.

In fact, the political dogfight in 1910 seems to have been more acute in the municipalities, at any rate, than in 1958. In Halifax there wasn't even a Labour candidate masquerading as a People's Candidate; no Conservatives calling themselves Municipal Reformers; no Liberals disguised as Progressives or Ratepayers. There wasn't even an independent.

Let's move 18 years forward and examine the four Halifax wards, now re-named Akroydon, Central, Copley and East. Percentage polls in the municipal election in 1928 were: 61·29; 48·55; 74·32; 60·22.

A tendency to fall. Party political warfare, of course, was being continued.

Finally, let's go back to 1889 when not a single party political label appeared in the municipal elections in Halifax.

In that year, there were only two wards, Market and East. Market Ward had 1,005 burgesses on the roll and 749 voted. East had 846 on the roll and 570 voted.

Well? I showed the figures and put my question to the men with the long memories who had assured me that 90 *per cent.* polls would be common again in England and Wales in the local elections if the party political labels were eliminated and party warfare abandoned.

But the figures do not prove anything of the kind. In fact, the figures I have cited show that, if anything, interest in local affairs was at least as keen in the days of bitter political warfare before the First World War as in the days of the latter part of the nineteenth century when it was rare to find politics in the parish hall council chamber.

And yet . . . have I got the whole story here? Are the figures everything? Could it be slightly misleading to surmise that, because a candidate in 1910 described himself as Liberal in the municipal elections, then that election was conducted as a phase in the never-ending battle against the Conservatives.

In other words, what were the candidates talking about in 1910? What were they talking about in 1889? What are they talking about this year?

Back in 1889, of course, there was the profound difference (which does, I agree, in some measure invalidate comparison) that few people, comparatively, had the right to vote at all. No women, for instance. And a good many of the men who had the right quite simply had not got the education that permitted them to judge the issues and, very obviously, from the type of election literature that was sent out there was no effort on any sustained scale to curry favour (and solicit the votes) of this section of the community.

But how about 1910? More voters. More voters with the education that permitted them to exercise discretion in marking the voting paper. So there were more public meetings (more, I fancy, than in any elections in the municipalities since the First World War).

In the Halifax wards, the Liberals and the Conservatives had the support of their respective party organizations. Many of the candidates were leading local figures who appeared on the election platforms at the general elections. But the municipal campaigning contained little or nothing of what might be termed rigid party appeal. The elections were fought out on the simple parish pump issues of the day: the future of the Halifax markets, the local passenger transport service, the proposed erection of a new sewage disposal works, the rates.

This year? Well, in 1958, the public meeting is a rarity at municipal elections. In Halifax, for instance, two months before the date set for polling it was stated by both the major political organizations that public meetings would "probably not be held this year—they are out of date and nobody goes to them any more."

Of course, nobody can attend public political meetings which are not held. But I must agree that the measure of public support accorded to the rare public political meeting held in recent years certainly supports the view of the party organizers—that public meetings at elections are simply not worth the time and expense.

And here, I think, in some measure is the reason for deepening apathy in the municipal elections. There is a sort of vicious circle in motion. The attendance of the public at the party meetings that used to be held in the three weeks before polling day fell away more and more so fewer meetings were held and attendance fell further and so scarcely any meetings are held—and the percentage poll goes down and down.

One point I do think the party political organizers do overlook is the fact that where public meetings are not held (and this means virtually every part of the country) there is less about elections to report in the newspapers.

Of course, the national papers don't report the municipal elections, anyway. But the local papers, the local evening and the weekly do—if they get the chance.

What sort of material, what sort of "copy" can these local papers get today in the weeks just before the election?

As likely as not all there is, is the formal paragraph that so-and-so has been adopted as prospective candidate for such-and-such a ward.

Then there will be the nomination day and the list of nominations. And then—well, if the paper has an enthusiastic editor and news editor, perhaps, near the election day, there will be pictures of the candidates in the various wards with a biographical pen sketch and, perhaps, a couple of hundred words from the election address of each of the candidates.

But, in 1910, there were public meetings night after night. Very lively public meetings, too. The Conservatives, meeting on Tuesday night, would take good care to answer the taunts flung at them by the Liberals the night before. There would be a Conservative statement of case followed, inevitably, by the Liberal reply, more or less reasoned.

Sustained interest. A note of something like drama. A public entertainment, if you like, in some respects. But it all helped to stimulate interest. And you got a pretty high percentage poll and, more, no lack of volunteers to stand for election.

Of course, we can't go back to 1910. We cannot restore the old way of things. If, in the weeks before next year's elections, an inter-party agreement was reached to start holding public meetings again night after night I doubt whether the results would compensate. The occasional meetings that have been tried do show that. So the vicious circle must go unbroken?

I don't think so. At least I think it can be broken and public interest restored in the affairs of local government, but only at the expense of the people who lead party warfare in the town halls.

In those elections in 1910 there was public interest in the local issues that were being thrashed out just before the elections. In 1910 (and here is the big difference between the system then and now) while the party labels were there all right, the party whips were not—not, at any rate, in the degree in which they are present today in the council chambers up and down the country.

Far too often, so it seems to me, the essential local issue in municipal affairs is treated according to the party "line" —and the whips are on. This is far more obvious in affairs of the county councils than in the borough councils—and it is the direct cause, I submit, of the very low percentage polling in the county council elections even when compared with the municipal elections.

(You might ask, what then, about the percentages in the district councils where sometimes the percentage poll is lower than in the towns? Quite clearly, here, the ratepayers are treating the district councils with some contempt because of the undeniable fact that the real power rests with the county council.)

But how to get these whips off? How to restore the position whereby local affairs were debated and decided without reference to party desires?

It's a difficult problem but it can be solved. First, as an essential preliminary, I would suggest that the system of allocating places on standing committees, at present in many bodies, the prerogative of the rival political groups within the council, be revised and the committees made up first on the basis of experience—retired headmasters given first refusal of a seat on the education committee, a magistrate on the watch committee and so forth, the committees then being "topped up" with vacancies filled on party lines.

A reform like this, awkward, I agree, to implement, would be a start at any rate towards breaking the power of the whips.

More "free votes" in the county halls and the town halls —that, broadly, is, I think, the solution to this problem of the public's deepening apathy.

More "free votes." More cogent debate. Less "rubber stamping." And I think the public would respond. I think even they might condescend to attend an occasional public meeting to hear the rival policies explained.

They might even vote.

MISCELLANEOUS INFORMATION

MENTAL PATIENTS IN THE COMMUNITY

Mental and mental deficiency hospitals sometimes make maintenance grants to patients living in the general community on trial, or boarded out or on leave or licence. The various powers under which these payments are made are related to the legal powers of detention and are not interpreted as extending to voluntary patients. It was pointed out in the report of the Royal Commission on the law relating to mental illness and mental deficiency that the National Assistance Board have general powers which overlap the powers of the mental and mental deficiency hospitals and local health authorities. In some areas, hospitals and local health authorities still make grants themselves even when the recipient could be equally eligible for help from the Board. The Royal Commission considered it entirely wrong that compulsory powers which restrict the liberty of an individual should ever be obtained or prolonged simply in order that financial assistance may be given to the patient and that the Board was the proper authority to make grants in such cases. The Minister of Health has therefore considered the matter with the Board and has informed hospital authorities of new arrangements which have been agreed under which the Board will be responsible for assisting patients while they are temporarily absent from hospital or are out on a period of trial.

LOCAL GOVERNMENT SUPERANNUATION

The South of Scotland Electricity Board Designated as a Public Board for Interchange Purposes

After consulting the local authority associations, the National and Local Government Officers Association and other interested bodies, the Minister of Housing and Local Government has designated the South of Scotland Electricity Board as a public board for the purposes of the Superannuation (Local Government and Public Boards) Interchange Rules, 1949 and 1955. The designation is effective from December 1, 1953, for moves from local government and from December 1, 1954, for moves from the board. It enables employees who leave local government service to enter the service of the board to preserve their superannuation rights. Similarly, those leaving the board to enter local government service will be able to take their pension rights with them.

STATUTE LAW REVISION ACT, 1958

This Act repeals some obsolete Acts which are enumerated in sch. 1 and 2. Certain other Acts which are set out in sch. 3 are repealed so far as they entitle persons to plead general issue in civil proceedings. As compared with former revision Acts the form of the Act was altered to make it conform with modern methods of drafting Bills. For the first time, therefore, in such a measure the Office of the Parliamentary Counsel was responsible for the drafting of the Bill.

When the Bill was considered by the Joint Select Committee of the House of Lords and the House of Commons parliamentary counsel pointed out that some of the Acts to be repealed were very interesting. The first Act mentioned in sch. 1 is of uncertain date and it is even uncertain whether it was an Act of Parliament at all. It dealt with contentions between parsons of churches and their parishioners as to trees growing in the churchyard, it being considered that the trees ought to be numbered amongst the church goods and could not therefore be disposed of by laymen. In any case if it was a statute it was superseded by a measure passed by the Church Assembly in 1951. Another Act mentioned in the schedule is the Collusive Actions Act, 1488, which concerned popular or *qui tam* actions. At that time apparently, if a person contravened a penal law he got a neighbour to bring an action against him by collusion. He then probably rewarded him with a drink and if somebody who really wanted to enforce the law tried to do so the offender could plead in bar. In fact *qui tam* actions have virtually disappeared and most of them were abolished in 1951. Certain of the other repealed Acts relate to the adulteration of tea and coffee or as it was called in the 18th century "sophistication" of tea and coffee. They were passed to prevent abuses in the public revenue at a time when duties on tea and coffee were very high. The Acts were not repealed previously because when the law about the collection of revenue was being reformed it was perceived that the Acts were capable of having an application in the field of legislation for the purity of food and drugs. But they have since been superseded by other legislation.

ADDITIONS TO COMMISSIONS

STAFFORD COUNTY

John Hawley Cooke, The Bates Farm, Maer, Newcastle-under-Lyme, Staffs.

John Sadler, Hilderstone Hall, nr. Stone, Staffs.

Thomas Albert Sanders, 39 South Avenue, Wednesfield, Staffs.

EAST SUSSEX COUNTY

Major William Lloyd Baxendale, Hailwell, Framfield.

Richard James Boughey, Ringmer Park, nr. Lewes.

Thomas Richard Dadswell, Montcalm, Brightling Road, Robertsbridge.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

I am glad to see a Note of the Week at 122 J.P.N. 594 on the time wasted in defending motoring cases solely and simply in the interests of the insurance company covering the driver who is charged with the offence and without any regard to the driver's personal wishes or interests.

Some time ago in this court a motorist who was charged with careless driving was defended at length by counsel although it was clear from the outset that there was no shadow of defence to the charge. After the inevitable conviction, counsel asked leave to address the court in mitigation and commenced by saying that the defendant had realized he was wrong and had wanted to plead guilty but the interests of others made it desirable that the case should be thrashed out in full.

I am afraid this attitude of mind is all too prevalent amongst those whose fees are paid by insurance companies rather than the accused who will have to pay a monetary penalty and any costs.

This is quite apart from the question of the time and expense involved. The majority of magistrates are laymen, giving their services free but this is no reason why they should be put to the expense of lost time for work or business to suit the book of insurance companies.

A collateral matter is a question of notes. At 122 J.P.N. 606, a practical point outlines the question of notes. These furious insurance company defences are frequently followed by a demand for the notes. Personally I refuse to supply them in these cases unless notice of appeal has been given or civil proceedings actually commenced.

Yours obediently,
F. G. HAILS,
Clerk to the Justices

Sessions House,
Highfield Road,
Dartford.
September 18, 1958.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Under "Notes of the Week" (J.P.N. 122 No. 36) you quote a report from the *East Anglian Daily Times* respecting the United States Air Force, and the withdrawal of driving licences in certain cases.

In the court referred to, the man was asked to produce his driving licence but was unable to do so, stating that his commanding officer had retained it. It was then explained to the justices that in the event of an accident or suggested proceedings involving a member of the United States Air Force, the driving licence of the person concerned is withdrawn. This statement was not elaborated at court.

To be fair to your readers, the actual procedure should be explained, in so far as it affects one United States base in this area.

When notified of a traffic accident, the squadron commander of the driver concerned investigates the circumstances and personally notifies his commanding officer within 48 hours. Unless the initial investigation proves that the individual is in no way responsible, the individual's driving licence is immediately withdrawn.

The vehicle accident control officer investigates all accidents and any persons involved may appear during his investigation of the accident. Following this inquiry the vehicle accident control officer submits his recommendations to a Traffic Advisory Board. This board meets twice every month and decide what action, purely from a service angle, shall be taken in each case. Should this board order suspension of a driving licence this is effective from the time the licence was first withdrawn.

The above procedure is quite separate from any civil proceedings and is used whether proceedings are taken or not. It is a purely domestic matter for the United States Air Force.

Should a United States serviceman be convicted for an offence in connexion with the driving of a motor vehicle on a public road, the man knows that under orders issued by his commanding officer that further action will be taken by the service, *e.g.*, first offence for excessive speed, his licence suspended for 15 days —for careless driving, 15 days' suspension, etc.

The commanding officer is determined to reduce the number of accidents and incidents in which his men are involved, and by the methods outlined above, he hopes to do this.

Yours faithfully,
H. H. TALBOT,
Superintendent.

Divisional Headquarters,
Police Station,
Saffron Walden.
September 16, 1958.

[We are grateful to our correspondent for his fuller information about the matter and we are sure that our readers will be interested in this.—*Ed. J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

The Home Office announces that Mr. W. M. E. Crump, assistant director in the office of the Director of Public Prosecutions, has been promoted to be deputy director in the place of Mr. G. R. Paling, C.B., C.B.E., who retired on October 6, last. Mr. E. C. J. Jones, senior legal assistant, has been promoted to be an assistant director. The appointments took effect from October 7, last.

Mr. Thomas Hambrey Jones, an assistant solicitor with Kent county council, has been appointed county prosecuting solicitor for Essex, and will take up the appointment on January 1. Mr. Jones, before going to Kent, was assistant solicitor to Wallasey county borough council, and prior to that was with Hastings corporation.

Mr. J. H. Cullen, deputy clerk to the justices for the county borough of Birkenhead, has been appointed clerk to the justices, as from the beginning of November. He succeeds Mr. F. C. Williams, who was deputy clerk for 20 years before being appointed clerk in 1948. He joined the justices' clerk's office in 1911. Mr. Cullen is 47 years of age and was articled to the late Mr. E. W. T. Gasking, clerk to the Birkenhead justices. Owing to Mr. Gasking's absence for health reasons for lengthy periods, Mr. Cullen carried out many additional duties between 1934, when he was appointed second assistant solicitor, and 1937. After service in the 1939-1945 war, Mr. Cullen returned to his post at Birkenhead. In 1948 he was appointed deputy clerk and collecting officer.

Mr. Francis Nuttall, deputy clerk to Bromley, Kent, magistrates, has been appointed magistrates' clerk at East Grinstead, Uckfield, and Hailsham from January 1, next, subject to Home Office approval. Mr. Nuttall has been associated with the Bromley court for over seven years. He was appointed second assistant magistrates' clerk in 1951 and has been deputy magistrates' clerk since 1954. He was previously assistant clerk to the justices at Southend and the petty sessional division of Rochford. He is 37 years of age. Mr. Nuttall's appointment is consequent upon the East Sussex magistrates' courts committee's policy of appointing full-time justices throughout the county. The three petty sessional divisions have been re-grouped under one clerk following the retirement of Mr. H. James at Hailsham and the death of Mr. Luscombe at East Grinstead. Major J. H. Harris, clerk to the Uckfield justices and Mr. P. A. Williams, temporary clerk at East Grinstead, are retiring voluntarily.

Mr. Llewellyn Williams, deputy town clerk and financial officer to Ruthin, Denbighshire, borough council, has been appointed clerk and chief financial officer to Bala, Merioneth, urban district council.

Mr. Leslie Womersley, M.B.E., B.A., LL.B., D.P.A., has been appointed town clerk of Basingstoke, Hants., in succession to Mr. Meirion O. Jones, who retires on November 7, next, Mr. Womersley taking up his appointment on November 10, next.

Mr. R. R. Bibby, who has been appointed chief constable of Blackburn (*see* our issue of September 27, last), took up his new duties on October 1, last.

Mr. J. A. Mackay, deputy chief constable of Birmingham, has been appointed chief constable of Manchester in succession to Mr. Joseph Bell, who retires at the end of the year.

Superintendent W. A. Roberts, now in charge of the Garstang division, has been promoted chief of Lancashire C.I.D. He will be promoted to the rank of detective chief superintendent.

Mr. K. E. Steer has been appointed chief constable of Exeter, subject to Home Office approval. Mr. Steer has been acting as chief constable since Mr. A. E. Rowsell, chief constable for 17 years, took charge of the Brighton force in October, 1957. Joining the force in 1925, Mr. Steer had been superintendent and deputy chief constable since May, 1956. He is 50 years of age.

Miss Patricia Ann McCarthy has been appointed a whole-time probation officer for the city of Portsmouth to replace Miss Barbara Abraham who has resigned.

Mr. P. J. Owtram has been appointed a probation officer in the London service following a Home Office Training course. He took up his duties on September 15, last.

Mr. P. G. Andrews, formerly a Home Office trainee, has been appointed a probation officer in the Middlesex combined probation area. Mr. Andrews took up his duties on September 1, last.

RETIREMENTS

Dr. G. A. Clark, C.B., V.R.D., M.D., a deputy chief medical officer of the Ministry of Health, is retiring from the public service on September 30. He will be succeeded by Dr. D. Thomson, M.D., D.P.H., principal medical officer.

Commander E. P. G. Sandwith, O.B.E., R.N., is retiring from the office of town clerk, Chingola, on January 1, next. Educated at Clifton, he spent the early part of his career in the Royal Navy and then, until 1931, farming in Northern Rhodesia. In that year he became town superintendent at Luanshya, Northern Rhodesia, until the outbreak of war, when he rejoined the Navy. In 1948, he was appointed town clerk, Chingola.

Detective Chief Superintendent C. N. F. Lindsay is to retire after 37 years in the Lancashire constabulary. For the past 10 years he has been head of the C.I.D.

Superintendent F. G. Wells, deputy chief constable for the Isle of Ely, is to retire after 38 years in the force.

OBITUARY

Mr. Harold M. Arthur, clerk to the magistrates at Machynlleth and Towyn, Merionethshire, has died.

Mr. Charles Joseph Waters, M.B.E., formerly deputy town clerk of Wandsworth, has died at the age of 86.

ANNUAL REPORTS, ETC.

NATIONAL ASSOCIATION OF PROBATION OFFICERS: REPORT FOR 1957

This was an eventful year for the probation service, and the report deals at length with the various celebrations held to commemorate the jubilee of the Probation of Offenders Act, 1907. The point is made that, in spite of the opportunity presented by this event, there was a failure to make the most of the various publicity services in order to produce a decisive impact on the popular mind. We agree strongly that the public at large is inadequately informed as to the wide range of activities carried out by probation officers.

This general ignorance makes it all too easy for the salary position to be mishandled: assessing the work of probation officers strictly in terms of case loads is bound to lead to a wrong appreciation of what the work entails. The paragraphs devoted to the attempts to secure reasonable pay for this body of workers, on whom the judicial system has come so much to rely, make sorry reading. There is many a labourer nowadays who earns more money than a probation officer, and it is really puzzling beyond words that such a state of affairs should be tolerated by the authorities for one instant.

It is not surprising in view of the foregoing that the report has to speak of an increasing shortage of recruits and a rise in the average case-loads. As at present organized our penal system places great emphasis on probation; but the corollary—a well paid body of officers held in high regard by the public, and able to maintain a high standard of self-respect *vis-a-vis* probationers (a very important consideration)—is consistently ignored.

Nineteen fifty-seven was justifiably a year of mutual congratulation and commemoration. It needs to be followed by a period of sustained endeavour not only by probation officers, but by those who know their work at first hand and have authority to speak in their support, to win a due place in the hierarchy of the public service. There can be no gainsaying the point that salaries play a legitimate rôle in the achieving of this position. The day has gone by when the community could justifiably refuse proper rewards to a body of people because they were engaged on social service.

FINANCES OF THE WARWICKSHIRE AUTHORITIES, 1958–59

With the co-operation of the treasurers of the boroughs, urban and rural districts, county treasurer Mr. S. W. Davey, F.S.A.A., has produced the tenth annual booklet in this series for the use, as he puts it with sober accountant's caution, of authorities, their officers, "and may be the public generally." It is certainly worthy of study by the latter body, particularly those who live in the county.

Population continues to grow: five years ago it was 493,000, whereas the latest figure is 550,000. Rateable value is close on £7 million, equal to £12 10*s*. per head: the highest figure is in the borough of Stratford-upon-Avon (£18 9*s*.) and the lowest in Tamworth rural district (£8 1*s*.).

The total county precept was 14*s*. 4*d*.: county district rate levies varied from 21*s*. 4*d*. in the borough of Leamington to 17*s*. 3*d*. in the rural district of Alcester. Rate burdens per head of population ranged from £15 11*s*. in Stratford to £7 13*s*. in Tamworth.

Not many local authorities still continue to make large contributions to housing revenue accounts. In the year 1958–59 only four Warwickshire county districts propose to make sizeable contributions. They are:

	Amount	1*d*. *Rate Product*
	£	£
Nuneaton B.C.	31,200	2,350
Warwick B.C.	4,000	880
Bedworth U.D.C. ...	12,800	1,060
Stratford R.D.C. ...	8,000	870

Housing revenue surpluses for the 18 county districts increased during the year by £47,000 to a total of £155,000.

Net loan debt of all Warwickshire authorities totalled £57 million at March 31, 1958, of which £10 million had been incurred by the county council (mostly for education). County district debt was mostly on housing account.

The booklet contains a number of tables in addition to those from which we have quoted and all-in-all is a most valuable work of reference.

NEWARK WEIGHTS AND MEASURES DEPARTMENT

The need for periodical inspection of weighing and measuring instruments is shown by the statistics contained in the annual reports of weights and measures inspectors. In his report for the year ended March 31, 1958, Mr. R. Baggaley, inspector for the borough of Newark-on-Trent, states that during the year 639 outdoor inspection visits were made to 584 places. Eight thousand five hundred and four items of equipment were examined of which 472 were incorrect. All the appliances had become incorrect through fair wear and tear. In addition the total number of appliances submitted during the year were 762 weights, three measures of length, 121 weighing instruments and five measuring instruments. The number of weights adjusted was 494.

During the course of 206 visits to various premises, 6,740 articles of food were checked of which 215 were deficient. In addition 951 articles were examined under the Marking Order and only six were found to be incorrectly marked.

The majority of the deficiencies were caused by the evaporation of moisture in such foods as dried fruit and pulses. In two cases the evaporation was caused by the food being stored near to heating appliances. Shopkeepers can overcome this evaporation problem, says the report, by acting on the advice frequently given which is (i) weigh up only a sufficient quantity of the goods to ensure stocks are fresh, (ii) store away from heat, (iii) check a few packets at weekly intervals.

The position about the sale of solid fuel in Newark seems to be unusually satisfactory. Only three sacks of coal were found deficient in weight out of 499 sacks examined, of which 199 were re-weighed.

ENGROSSING SUBJECTS

For their few surviving devotees, the ancient classics are refreshing oases in the arid desert of modern materialism. The literatures of Greece and Rome are perennially new and youthful, like the paintings and architecture of the Renaissance, and the music and philosophy of the eighteenth century. Humanity of sentiment, breadth of vision, elegance of style, perfection of form; above all, a dignified restraint—the Greek ideal of "nothing in excess"—are the hallmarks. They are stamped indelibly upon the Homeric Epics, the Platonic Dialogues, the Virgilian Eclogues and the Ciceronian Orations; they are inherent in the paintings of Raphael and the architecture of Bramante; they are imprinted upon the scores of Haydn and Mozart, the poems of Thomas Gray, the treatises of Berkeley, Locke and Hume. Such men are the aristocrats of their art; their admirers today are the fastidious and selective few. All of them have in common the classical ideals—as far removed, in sympathy and basic emotion, from the blatant, noisy, demagogic values of today as was the life-pattern of the Mongolian nomads from the aims of the Industrial Revolution.

The recent meeting of the Classical Association has shown that there are still a few upholders of tradition who can breathe that rarefied atmosphere. They have been discussing the problems of translating Greek and Latin verse into English. Professor C. S. Lewis was the protagonist in an attack upon present-day attempts to render these poetical works of the ancients into the modern idiom—"as though poetry began with Mr. Eliot and Mr. Pound, and everything written in the past was 'bunk.'" Why should there be such fear and hatred, today, of archaism and poetic diction? "We still keep archaism and ritual elsewhere in life—in dressing for dances, for example" (and, he might have added, for appearances in courts of law.) Dispense with archaism and ritual, and you dispel the atmosphere you have striven to create.

In throwing classicism overboard, from art's frail barque, we have jettisoned the supreme virtue of restraint. Quality has been sacrificed to quantity. The modern artist, playing down to an ignorant public, never knows when to stop. On stage and screen, an item which might have been amusing for 10 minutes has to be dragged out for an hour and a half. On radio and television, the same mild joke has to be repeated 12 or 14 times in every performance, in case some moron in the audience has still missed the point at the ninth or tenth repetition. Our cultural leaders bow down to no god but the many-headed Demos. They base their standards, not on character and quality, but on numbers. Listeners' and viewers' "surveys" (running into millions); "cross-sections" of opinion; "Gallup Polls"—these are the highest court of appeal. One man's opinion is as good as another's. "I know what I like" is the only criterion; good taste, in the old-fashioned sense, has been ruined by satiety; artists have worn their values thin by rubbing shoulders with the populace.

The tiresome omniscience, the ignorant complacency, that presumes to regard the present ugly, materialist shape of things as the acme of civilization, is as arrogant today as it was among the *fin de siècle* Victorians. In the early years of this century it was deservedly castigated by that master of satire and paradox, Gilbert Keith Chesterton. There is scarcely anybody of a sufficient stature nowadays to do that salutary job.

Despite his reception, in 1922, into the Roman Church, Chesterton's writings show him to have been in the best sense, a pagan. He believed, in a full-blooded way, in enjoying the good things of life; he might have said, with Macaulay, that "there is no spectacle so ridiculous as the British public in one of its periodical fits of morality." He disliked extremely that milk-and-watery puritanism which disfigured late Victorian life, and still bedevils some of our institutions today. His writings have the humanity, the breadth and the elegance of the classicist; but withal they show a colourful imagination, a robust sense of fun, a derision of all that is comprised in the word "humbug"; qualities which give to his classicism a touch of the baroque.

We wonder what he would have thought of the latest reading of minds in the mass—a "market research survey of 3,000 housewives," solemnly classified "according to whether they shop at a co-operative, a multiple or an independent grocer's." Price, variety and freshness of merchandise, cleanliness, efficiency of service, have all been marshalled, tabulated and voted upon, with all the earnestness and attention to detail, and in all the permutations and combinations, that care can command and ingenuity devise. With individual preferences we are not concerned; but the state of the trade in general, and methods of appraisement, seem to have changed considerably in the 44 years since G. K. Chesterton penned that satire in the pages of *The Flying Inn*:

> "God made the wicked grocer
> For a mystery and a sign;
> That men might shun the awful shops,
> And go to inns to dine."

What, for example, would the Shop Assistants' Union today have to say about the following?

> "His props are not his children,
> But pert lads, underpaid,
> Who call out 'Cash!' and bang about
> To work his wicked trade.
> He keeps a lady in a cage,
> Most cruelly, all day;
> And makes her count, and calls her 'Miss'
> Until she fades away."

And how would the inspectors of the Ministry of Food react to the alleged practices described below?

> "He sells us sands of Araby,
> As sugar, for cash down;
> He sweeps his shop and sells the dust
> 'The purest salt in town.'
> He crams with cans of poisoned meat
> Poor subjects of the King;
> And when they die by thousands, why
> He laughs like anything."

"Of those who *favoured* self-service," says the recent survey, "38 *per cent.* said it was 'quick, no waiting,' and 21 *per cent.* liked it because 'they can take their time.' Of those *disliking* it, 42 *per cent.* said they preferred personal service, and 17 *per cent.* that it 'tempted to overspend.'" How G.K.C. would have enjoyed himself laughing at the infallibility of the common housewife, and parodying the tyranny of majorities! His own summing up of the trade situation in 1914 (though it might be defamatory today) is picturesque, snappy and succinct:

> "But now the sands are running out
> From sugar of a sort;
> The grocer trembles, for his time
> (Just like his weight) is short."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Dogs—*Exemption from dog licence duty—Customs and Inland Revenue Act*, 1878, *s.* 22—*"A farmer or a shepherd"—Dogs Act*, 1906, *s.* 5—*Forestry workers using dogs to round up stray sheep.*

From time to time, applications are received for a certificate of exemption from dog licence duty under the provisions of s. 5 of the Dogs Act, 1906, from certain forestry workers, part of whose duty appears to be the rounding up of sheep belonging to various farms in the area which enter the forest plantations on the hills. These persons apparently perform normal forestry duties, but state the use of dogs is essential to them to perform that part of their work concerning the herding of sheep which stray into the plantations and can cause damage therein.

The Act itself contains no definitions of the terms "farmer" or "shepherd" and there appears to have been no cases decided on this point. I should therefore appreciate your opinion as to whether these persons are entitled to a certificate of exemption from dog licence duty either as a shepherd or farmer.

G. CYMRO.

Answer.

Exemption from dog licence duty is provided for in s. 22 of the Customs and Inland Revenue Act, 1878. Subsection (2) of that section begins: "The owner, whether a farmer or a shepherd . . ." In this case, the forestry workers are certainly not farmers and we cannot see how they can be classed as shepherds. In our opinion "a shepherd" in the section means a person whose regular occupation is taking care of sheep, and not someone who incidentally has to deal with sheep in the course of another full-time occupation. We do not think that these workers are entitled to a certificate of exemption.

2.—Gaming—*Small Lotteries and Gaming Act*, 1956, *s.* 4—*Housey-housey in a club.*

I have been asked to advise generally in the matter of the running of the game of "housey-housey" or tombola in the social club of an industrial concern. It is proposed to play this game in the firm's club (members only) on two nights per week, namely Tuesdays and Fridays. On each of these two nights, 10 games will be played, the entrance fee or stake for each game being 6*d.* per person. Of the proceeds, 15 *per cent.* will be given to charity, the expenses of running the tombola will be paid, and the remainder will be paid as prize money.

I should be pleased to have your views on the following points which have occurred to me having regard to s. 4 of the Small Lotteries and Gaming Act, 1956. I do not think s. 1 of the Act can apply to this case:—

(*a*) Do you consider that each of the 10 games played on one night is "a game" or "a separate entertainment"?

(*b*) Assuming that each game played is "a separate entertainment" do you consider that the prize money can be £20 *maxima* for each game, and the maximum stake or entrance fee for each such game, 5*s.*

(*c*) Assuming that each game is not "a separate entertainment" but that the total of 10 games constitutes an entertainment, do you agree (i) that the total prize money to be payable on the completion of each game would be a maximum of £2, and (ii) that each person who wished to participate in all 10 games would have to make a single lump payment of 5*s.* and would not be allowed to pay 10 separate stakes of 6*d.* (para. (*a*), s. 4).

(*d*) Having regard to s. 4 (1) (*b*) of the Act, assuming you agree with the suggestion in para. (*c*) above, do you consider that only one distribution of prize money can be made to the 10 winners at the end of the evening's play and that the distribution of prize money should not be made at the end of each completed game.

FOLBUR.

Answer.

We agree with our correspondent that s. 1 of the Act would not apply to this case. We would answer the specific questions as follows:—

(*a*) Each of the 10 games is "a game" and not "a separate entertainment."

(*b*) Does not arise.

(*c*) (i) Yes.
(ii) Yes.

(*d*) Yes.

In passing, we do not quite follow the proposed break-up of the proceeds. The total will obviously depend on the number playing and we cannot see how 15 *per cent.* will be given to charity. In certain cases this would not be in accordance with s. 4 (1) (*c*) and a better and safer distribution would surely be that £20 and expenses were deducted from the proceeds and the remainder given to charity.

3.—Highway—*Roads Improvement Act*, 1925—*Trees—Relation to water mains.*

A tree in the footway of an adopted street was removed by the council at the request of the water undertakers, to enable the latter to repair a burst water main. The tree was planted in pursuance of the council's powers under the Roads Improvement Act, 1925, after the water main had been laid, and the water undertakers allege that the roots were so near the water main that it was not possible for the main to be repaired without removing the tree. The council now seek to charge the undertakers with the cost of the removal and replacement of the tree. It is not alleged that the roots of the tree have damaged the water main.

1. Are the water undertakers liable for such cost?

2. What would be your reply if the tree had been planted before the water main was laid?

3. Generally.

PELAS.

Answer.

1. No, in our opinion.

2. No, in our opinion. The tree may not be placed or allowed to remain in such a situation as to be a nuisance or injurious to the occupier of land adjacent to the highway: *see* s. 1 (2) of the Roads Improvement Act, 1925, and, in our opinion, the section is directed against nuisance caused by the growth of trees, roots, trunk or branches.

3. Presumably the tree was not a nuisance when the main was laid.

4.—Housing Act, 1949, s. 23—*Limit on rent.*

We are acting for a client who is contemplating accepting an improvement grant under the Housing Act, 1949. He wishes to let the dwelling, which is the subject of the grant, either furnished or unfurnished and the clerk to the granting authority says that the maximum rent which he may charge in either case will be limited to the limits laid down by the Rent Act, 1957. He has further informed our client that this limit applies whether the premises are let furnished or unfurnished. On taking the matter up with him he has asked us to write to you. We are unable to find any authority for the proposition that the maximum rent which may be charged for premises which have been improved with the aid of a grant under the Housing Act are those laid down by the Rent Act, whether the property is let furnished or unfurnished. This proposition seems to us illogical, in so far as the Rent Act would not apply to the dwelling in any event, as it was not let at the relevant date.

PISTON.

Answer.

The limit on the rent will be that provided by s. 23 of the Housing Act, 1949, unaffected by s. 37 of the Housing Repairs and Rents Act, 1954, which is repealed by the Rent Act, 1957. The limitation under the Act of 1949 will apply, in our opinion, whether the house is let furnished or unfurnished, and if the house is not subject to the Rent Act then the only limitation will be that in the Act of 1949.

5.—Housing Act, 1949, s. 4—*Further purchase and further charge.*

A rural district council who already have made an advance to a borrower to enable him to purchase a cottage have been approached by the same borrower, who is now proposing to purchase an adjoining cottage with a view to turning the two properties into one, for an advance to purchase the second property. We have been asked to prepare a mortgage of this second property, and it is proposed that the term shall be for 10 years and the rate of interest more than was previously agreed

on the first advance, where the term for repayment was 20 years. Our instructions to prepare a mortgage of the second property to enable it to be purchased by the proposed borrower do not appear to be practicable.

We have in mind that the better course would be for the council to make the proposed advance for the purpose mentioned by way of a further charge, bringing in the new property by way of additional security. In your opinion would this be the correct procedure, and that the council would be fully protected under the above Act in the event of failure by the proposed borrower to carry out the covenants and conditions in such proposed further charge and the original mortgage.

P.T.M.C.

Answer.

We agree that the suggested course would be better, and would provide full protection if s. 4 of the Housing Act, 1949, is otherwise complied with.

6.—Housing Act, 1957, s. 17—*Demolition order—Request to revoke.*

The council made a demolition order under the provisions of s. 17 of the Housing Act, 1957, last year which required the demolition of the building by September last. The owner has not taken any steps to demolish the property, and has now approached the council with a request that he may be allowed to retain the building for use as an agricultural store. When the "time and place" notice was served under s. 16 the owner did not avail himself of the opportunity of submitting any scheme and no undertaking has been accepted. The building is detached and, therefore, no question of making a closing order in lieu of a demolition order under s. 17 can arise.

It appears that the only provisions for revoking a demolition order are contained in ss. 24 and 26 of the Act. In the first case the power can only be exercised if the owner intends to reconstruct the premises as a dwelling and the second can only be brought into effect when the house is in a special category. There does not appear any authority for the council to revoke the demolition order in the circumstances of the present case. It appears that the council must exercise their statutory duty to require the demolition of the property, in accordance with the demolition order.

PIVER.

Answer.

We agree. The owner has lost his chance by his own neglect.

7.—Land—*Costs of vendor's solicitor—Taxation.*

A point has arisen in connexion with the conveyancing costs of the vendor's solicitors for land purchased by my council. The price of the land is £45, and I understand that the vendor's solicitors are seeking to make a charge of £52, on the ground that the negotiations regarding the purchase have been protracted because the property was owned by a trust, and it was necessary to have long correspondence with the Charity Commissioners.

The points upon which I shall be glad of your opinion are:

(*a*) If the vendor's solicitors elect to the vendor to charge sch. 2 fees, at what time must they so elect? Must they elect at the time of taking instructions from their clients, or may they elect when the contract for sale has been prepared but not signed?

(*b*) Can my council make application to the vendor's solicitors who have elected to charge under sch. 2 for their costs to be submitted to the clerk of the peace for taxation? In this connexion I note that s. 242 of the Local Government Act, 1933, which provides for examination of any bill of costs by the clerk of the peace, relates to costs incurred by the council in respect of legal business performed on their behalf and according to *Lumley* this section does not apply to the costs of the solicitors to the vendor of land, as they are not acting on behalf of the council.

ETORA.

Answer.

(*a*) At the time of taking instructions: *see* r. 6 of the Solicitors Remuneration Order, 1883, referred to in the heading to sch. 2 as revised by S.I. 1953/117.

(*b*) Not, we think, under the section cited, about which we agree with *Lumley*. But *see* s. 70 of the Solicitors Act, 1957, replacing similar sections, and *Re Gray* [1901] 1 Ch. 239; *Re Cohen* [1905] 2 Ch. 137. In the former case, Cozens Hardy, J., examined a number of earlier decisions; the result is that the council can, if they think it worth while, have the bill taxed under that section.

8.—Landlord and Tenant—*Rent Act,* 1957—*Private street expenses.*

I should be glad of an opinion as to the exact occasion upon which any expenditure upon private street works carried out under the Private Street Works Act, 1892, becomes incurred by a frontager for the purposes of s. 18 of the Rent Act, 1957. The point has arisen in connexion with certain streets being made up by the council, the works in connexion with which had been completed before July 6, 1957, the day upon which the Rent Act, 1957, came into force, but the final apportionments in respect of which were not served until some time later.

PADAR.

Answer.

The liability dates from the completion of the works, in our opinion, because it is from that time that the sum finally apportioned is a charge on the premises: *see Stock* v. *Meakin* (1900) 82 L.J. 248.

9.—Landlord and Tenant—*Rent Acts,* 1933 *and* 1957—*Alternative accommodation.*

Paragraph 21 of sch. 6 to the Rent Act, 1957, substitutes a fresh para. (*h*) for para. (*h*) of sch. 1 to the Act of 1933. We assume that in view of the difference in the wording of the alteration effected to this paragraph by the Act of 1957 from the wording in sch. 2 to the Act of 1938 that the old para. (*h*) which is revoked includes the proviso which followed it, but we are not sure on this point and can find no authority. We shall be obliged if you can refer us to any, as we have to advise upon it.

PUZZLE.

Answer.

The proviso is a proviso to the whole schedule and is printed as a proviso apart from the paragraphs, although it deals only with para. (*h*). The proviso, in our opinion, is not affected by the insertion of a new para. (*h*) and still stands. It is so printed, for example, in *The Rent Act, 1957,* by S. W. Magnus (Butterworth & Co.). The only decided case we have found is in the county court, noticed in *Current Law,* June, 1958, para. 269, where Judge Granville Smith held that para. (*h*) applied, but decided in favour of a defendant by virtue of the proviso.

10.—Magistrates—*Practice and procedure—Fixing amount of fine—Means of defendant—Procedure when case heard under the Magistrates' Courts Act,* 1957.

1. I shall be glad to have your opinion as to what steps (if any) magistrates should take, before imposing a fine, to inform themselves of the means of a defendant who is being dealt with under the Magistrates' Courts Act, 1957.

2. Would it be appropriate for the prosecution to give particulars of means in the statement of facts ?

3. Would it be proper for evidence of means to be given to the court at the initial hearing, in the absence of the defendant, by the sworn evidence of a police officer ?

4. Would it be proper for the court, after accepting the plea of guilty, to adjourn the hearing and direct the prosecution to give evidence of means at the adjourned hearing ? If so could sworn evidence of means then be accepted if the defendant does not appear at the adjourned hearing ?

K. SUDIM.

Answer.

1. The only requirement in s. 31 (1) of the Act of 1952 is that the court shall take the means of the defendant into consideration *so far as they appear or are known to the court.*

We do not think that the court are required to take any steps in such cases to inform themselves of the means of the defendant.

2. We think that if the prosecution have reliable information about the defendant's means, there can be no harm in their including this information in the statement of facts, but it seems likely that in many cases they will not have such information.

3. No.

4. Yes, provided that the defendant is told in the notice the reason for the adjournment and that he may appear if he wishes at the adjourned hearing.

11.—New Streets Act, 1951—*Land fronting on repairable highway.*

The owner of a piece of land within the urban district, in respect of which an outline application for development by the erection of three dwellings has received conditional consent, has applied for exemption from the provisions of the New Streets Act, 1951, in respect of that development. At the present time the land is merely a field adjoining a highway repairable by the inhabitants at large. I am of opinion that, by the definition of a private street in s. 10 of the Act of 1951, the Act is not applicable in this case. In other words, as there is no street in existence the council has no power to apply the Private Street Works Act code and, therefore, the Act of 1951 does not apply.

PINON.

Answer.

If the dwellings front on the highway only, the Act will not apply. If, however, they will front on a proposed street, shown on plans deposited under the building byelaws or on the application for planning permission, the Act may be applied; *see* the extension of the meaning of private street made by the New Streets Act, 1951, Amendment Act, 1957, s. 6 (8) (*b*).

12.—Public Health Act, 1936—*Sewers causing nuisance—Sewer not laid by council.*

My council are concerned with a claim for damages from an owner of lands through which passes a natural watercourse into which a public sewer discharges. This sewer, formerly an open ditch, was inherited by the council from the former rural sanitary authority and the council have not at any time carried out works thereto except, in the interests of public health, piping a short section of the ditch adjoining the highway immediately before its discharge to the stream. As a result of provision of main water supply and consequent installation of water closets, etc., as well as erection of new dwellings in later years, the system has ceased to deal adequately with the sewerage of the parish and there has been an increase in the pollution of the stream the subject of complaint. Having regard to the decision in *Glossop* v. *Heston and Isleworth Local Board* (1879) 44 J.P. 36 and *A.-G.* v. *Dorking Union* (1882) 46 L.T. 414) and relevant extract from the judgment of Lord Evershed, M.R., in *Pride of Derby Angling Association* v. *British Celanese Ltd. and Others* (1953) 117 J.P. 52; [1953] 1 All E.R. 179, your opinion is sought as to whether piping by the council of a section of the former open sewer, in the interests of public health, and the exercise of statutory rights by other persons in connexion of drains to the sewer, render the council liable in an action for injunction and damages.

PIDAR.

Answer.

On the facts of this case, it seems that the council have merely failed in their duty to provide an adequate system of sewerage, and the remedy for that failure is a complaint to the Minister of Housing and Local Government under s. 322 of the Public Health Act, 1936: *cf. Hesketh* v. *Birmingham Corporation* (1924) 88 J.P. 72; *Robinson* v. *Workington Corporation* (1897) 61 J.P. 164. The council is not liable therefore to an injunction or damages.

13.—Public Health Act, 1936, s. 56—*Several owners—Service of notice.*

In the older part of this borough there is a passage giving access to the rear of houses which, it is considered, comes within the scope of s. 56, and which the council have decided should be dealt with under the section. The passage is some 100 *yds.* long, and gives access to houses whose rear walls back on the passage on both sides. The majority of the houses are in separate ownerships. The question has arisen upon whom notice under the section should be served. I have been unable to find any authority or guidance on the point, save that the note to the section in *Lumley* (12th edn.) suggests that the section contemplates the service of a notice on one owner in the first place, leaving him to his remedy in s. 290 (3) (*f*) of the Act. As to the selection of the particular owner, it has been found that a group of three or four houses is owned by one person who, therefore, has a greater interest in the passage than other owners of individual houses and it is proposed to serve the notice on him. I am concerned, however, as to whether this is the correct way to serve the notice, particularly because some of the works which the owner will be required to carry out are 50 or 75 *yds.* away from the houses owned by him, and it can be argued that it is unfair that one owner should be put to the trouble and possible expense of bringing in perhaps 30 or 40 other owners on an appeal under s. 290 (3) (*f*).

Your opinion is requested, therefore, on the question whether the basis suggested above (and as suggested by *Lumley*) is correct or whether it is possible to serve a notice on each owner whose property backs on to the passage, requiring him to carry out works in that part of the passage immediately adjacent to his property. One objection to the last suggested procedure is that it is necessary to ask for the provision of a gully trap at the end of the passage to take water draining therefrom, and if this procedure was adopted the owner of the house at the rear of which the gully trap will be constructed would have to provide it, although it will serve the whole of the passage.

PIREBA.

Answer.

In our opinion the method suggested in *Lumley* should be followed.

14.—Rating and Valuation—*Arrears of rates—Insolvent company.*

There is due from a limited company a sum for arrears of rates in respect of premises formerly occupied by the company. This amount is outstanding because the company lodged an appeal against the assessment of their premises, and pending a decision on that appeal was assessed for rates on the basis of the assessment for the previous year. The appeal was dismissed, and the balance of rates due on the assessment for the year, as confirmed by the valuation court, was demanded. The secretary of the company has stated that the company is no longer trading and has no assets, saying that their assets were sold to meet liabilities, which action in fact entailed him in personal loss. He explains that he understood all the company's liabilities had been met, and that it was only because the company had had no notification of the hearing of their appeal against assessment that the rates payable as a result of the dismissal of that appeal were not paid. The valuation officer had no notification of a change of address, and the notice of hearing was returned marked "gone away." The court, however, dealt with the appeal and made no reduction in the assessment.

So far as can be ascertained, the company has not taken any formal steps under the Companies Act, 1948, to wind up, voluntary or otherwise, but has merely disposed of its assets, presumably to that extent discharged liabilities, and ceased to trade. Apart from failure to proceed formally to wind up, which has no doubt resulted in the council's claim being overlooked, it does not appear that anything has been done which gives the council a right to proceed against those responsible, or in any way re-open the matter so as to recover the monies due. Can you confirm ?

BAINOR.

Answer.

On the facts stated we see no step that can be taken.